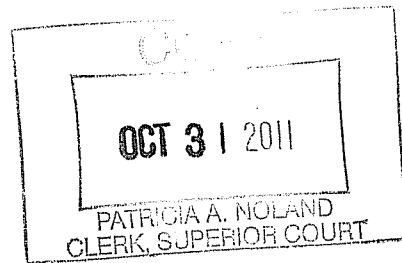


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10 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
11 IN AND FOR THE COUNTY OF PIMA

12 THE STATE OF ARIZONA *ex rel.* THOMAS C.
13 HORNE, the Attorney General, and THE CIVIL
14 RIGHTS DIVISION OF THE ARIZONA
15 DEPARTMENT OF LAW,

16 Plaintiff,

17 v.

18 DENTAL SMILE SPA, INC., an Arizona
19 corporation, d/b/a Smile Spa, DR. MICKEL
20 MALEK, a single man, owner,

21 Defendant.

No. **C20117703**

**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF**

(Non-classified Civil)

TED B. BOREK

22 Plaintiff, the State of Arizona *ex rel.* Thomas C. Horne, the Attorney General, and the
23 Civil Rights Division of the Arizona Department of Law (collectively "the State"), for its
24 Complaint, alleges as follows:

25 **INTRODUCTION**

26 This is a public enforcement action to correct (1) the unlawful practice of different
treatment in the terms, conditions, and privileged of employment based on sex, including, but

1 not limited to, sex-based hostile work environment and sexual harassment in violation of the
2 Arizona Civil Rights Act, A.R.S. § 41-1463 (“ACRA”), and (2) the unlawful practice of
3 retaliating against employees for complaining about discrimination or participating in a
4 Division investigation, in violation of ACRA, A.R.S. § 41-1464. This action seeks to provide
5 appropriate relief to Tressa Sawyer (“Ms. Sawyer”) and other similarly situated aggrieved
6 females employed by Smile Spa, including Regina L. Jenkins (“Ms. Jenkins”), Krystal Grinde
7 (“Ms. Grinde”) and Tamara Bailey (“Ms. Bailey”) (collectively “Aggrieved Parties”), who
8 have been adversely affected by these practices. Plaintiff, the State of Arizona *ex rel.* Thomas
9 C. Horne, the Attorney General, and the Civil Rights Division of the Arizona Department of
10 Law (collectively the “State”), contends that Defendant Dental Smile Spa, Inc. d/b/a Smile Spa
11 (“Smile Spa”) and Smile Spa’s owner, President, officer and only dentist, Dr. Mickel Malek
12 (“Dr. Malek”), (collectively the “Defendants”) have discriminated against Aggrieved Parties
13 because of their sex, female, by subjecting them to different terms and conditions of
14 employment, including a hostile work environment, by failing to take prompt action intended
15 to eliminate sex-based hostile work environment and sexual harassment, and by retaliating
16 against Aggrieved Parties for complaining about, opposing harassment and participating in a
17 Division investigation, all in violation of ACRA.

18 JURISDICTION AND VENUE

- 19 1. This Court has jurisdiction of this matter pursuant to A.R.S. § 41-1481(D).
- 20 2. Venue is proper in Pima County pursuant to A.R.S. § 12-401.

21 PARTIES

22 3. The Civil Rights Division of the Arizona Department of Law (“the Division”) is
23 an administrative agency established by A.R.S. § 41-1401 to enforce the provisions of the
24 ACRA, A.R.S. § 41-1401 *et seq.*

25 4. The State brings this action on its own behalf and on behalf of Aggrieved Parties,
26 who have been aggrieved by these unlawful practices within the meaning of A.R.S. § 41-1481.

5. At all times relevant to the allegations in this Complaint, Smile Spa has been a for-profit Arizona corporation with its principal place of business located in Tucson, Arizona.

6. At all relevant times, Dr. Malek served as Owner, President, Director of Smile Spa and Smile Spa's only practicing dentist.

7. At all relevant times, Dr. Malek resided in Tucson, Arizona.

8. At all relevant times, Smile Spa has been aware of Dr. Malek's conduct.

9. At all relevant times, Defendants have continuously been employers within the meaning of A.R.S. § 41-1461(6)(a).

10. Defendants have had more than one employee in the current and proceeding calendar year.

11. At all relevant times, Aggrieved Parties were Defendants' employees as that term is defined by A.R.S. § 41-1461(5)(a).

12. At all relevant times, as an employer, Defendants were responsible for the hiring, firing, disciplining, paying wages and compensation, establishing the terms, conditions and privileges of employment and setting policy for the employees operating and maintaining Smile Spa.

BACKGROUND

13. At all relevant times, Aggrieved Parties were employees of Smile Spa.

a. On or around February 2009, Ms. Bailey was hired by Defendants as a Patient Coordinator and was subsequently promoted to Assistant Office Manager.

b. On or around May 2009, Ms. Jenkins was hired by Defendants as a Hygienist and was subsequently promoted to Dental Hygienist/Office Manager.

c. On or around February 2010, Ms. Sawyer was hired by Defendants as a Co-Office Manager.

1 d. On or around April 2010, Ms. Grinde was hired by Defendants as a Patient
2 Coordinator and Dental Assistant.

3 14. At all relevant times, Dr. Malek was the only practicing dentist, president, CEO
4 and Director of Smile Spa.

5 15. At all relevant times from June 2009 on, Defendants did not employ any male
6 employees other than Dr. Malek.

7 16. At all relevant times, Defendants did not have an anti-discrimination policy or a
8 written procedure for reporting sexual harassment.

9 17. Defendant, Dr. Malek, owner of Smile Spa, participated in harassing conduct
10 toward Aggrieved Parties, therefore creating and fostering a sexual and sex-based hostile work
11 environment for which Aggrieved Parties had no recourse.

12 18. The sexual and sex-based harassment toward Aggrieved Parties, included, but
13 was not limited to, the following conduct:

14 a) Dr. Malek making frequent and, at times, daily offensive and unwelcome
15 sexual, degrading and derogatory comments to Aggrieved Parties in front of
16 colleagues and patients including, but not limited to:

17 i. Calling Ms. Bailey "bubbles" because he said "she has a big butt";

18 ii. Telling Ms. Sawyer that she no longer looked "like a beach ball"
19 now that she was working out;

20 iii. Telling Ms. Grinde that she was "blessed in at least one area" while
21 gesturing toward her breasts;

22 iv. Suggesting on at least two occasions that female employees share a
23 hotel room with him while attending a continuing education
24 seminar;

25 v. Telling Ms. Grinde on one occasion that he wanted to share a hotel
26 room for a continuing education conference with Ms. Jenkins and
Ms. Bailey, "his supermodels";

- vi. Repeatedly suggesting that mandatory staff and teambuilding meetings be held poolside so that female employees can wear bikinis, despite Aggrieved Parties telling Dr. Malek that his suggestion was inappropriate and unwelcome;
 - vii. Stating that because his female employees work out and have nice bodies, they should "show them off";
 - viii. Suggesting low cut, form fitted scrubs as an alternative to standard dental scrubs;
 - ix. Repeatedly making comments about patients' physical appearances to Aggrieved Parties;
 - x. Referring to his female staff as supermodels, and to himself as "Charlie" and the staff as his "Angels";
 - xi. Stating that a female job applicant was "too large" and he didn't know how she would get around the building;
 - xii. Discussing his sexual prowess with Ms. Jenkins;
 - xiii. Telling Ms. Jenkins about his sexual dissatisfaction with his current partner; and
 - xiv. Propositioning Ms. Jenkins to have sexual relations with him.
- b) Repeatedly comparing Aggrieved Parties based on physical appearance and making continuous and unwanted comments about whether he approved or disapproved of Aggrieved Parties' breasts, weight, hair, eyebrows and overall appearance including, but not limited to:
- i. Telling Ms. Grinde that she should allow him to shape her eyebrows because he did not like how they were shaped and as an artist he knew best;
 - ii. Telling Aggrieved Parties that he is not a "boob man";

- 1 iii. Telling Aggrieved Parties that Ms. Jenkins is perfect because of her
2 long legs and hair color;
- 3 iv. Telling Ms. Bailey that she needed to have a nose job and then she
4 would look like a supermodel;
- 5 v. Comparing Ms. Jenkins' appearance to his late wife;
- 6 vi. Referring to Ms. Regina Jenkins as Ragina (pronounced like
7 vagina) in front of patients and coworkers.
- 8 c) Engaging in physical harassment, including but not limited to incidents such
9 as:
- 10 i. Touching Ms. Grinde's buttocks while she was with a patient;
- 11 ii. Sticking his hand down Ms. Jenkins' pants in order to touch her
12 buttocks during a "teambuilding event";
- 13 iii. Touching Ms. Grinde's buttocks at a "teambuilding event";
- 14 iv. Grabbing Ms. Jenkins' breast at a social event; and
- 15 v. Rubbing his penis against Ms. Jenkins' shoulder during an after-
16 hours work event.
- 17 d) Subjecting Aggrieved Parties to humiliating treatment in front of colleagues
18 and patients, including but not limited to:
- 19 i. Training Aggrieved Parties to sit with their legs between Dr.
20 Malek's legs when assisting with patients, contrary to standard
21 dental practice;
- 22 ii. Berating Aggrieved Parties in front of colleagues and patients;
- 23 iii. Yelling at Aggrieved Parties in front of patients and/or colleagues,
24 including calling female employees, "fucking morons,"
25 "worthless," and "stupid";
- 26

- 1 iv. Telling a patient, while his female employees were present, that his
2 staff was "hot" and that "[he] like[s] hygienists," implying that he
3 likes hygienists sexually; and
- 4 v. Commenting openly to Aggrieved Parties about whether he
5 approved or disapproved of their breasts, weight, hair, eyebrows
6 and overall appearance.
- 7 e) Repeatedly propositioning subordinate female employees at the workplace or
8 at work events, both in private and public, including, but not limited to:
- 9 i. Sexually propositioning Ms. Jenkins on a continual basis despite
10 Ms. Jenkins telling Dr. Malek that she was not interested;
- 11 ii. Telling Ms. Jenkins that the person running his office needs to be in
12 a sexually intimate relationship with him.
- 13 iii. Telling Ms. Jenkins that her husband was not good enough for her
14 and that he would be a better mate;
- 15 iv. Weekly telling Aggrieved Parties that they should have their
16 meetings by the pool so that the employees can wear bikinis;
- 17 v. Suggesting to Aggrieved Parties who were required to attend
18 continuing education that he and his subordinate female employees
19 should share a room; and
- 20 vi. Telling Ms. Sawyer that if she would not share a room with Dr.
21 Malek than she would have to pay for her own room rather than
22 have the company pay for the room.
- 23 f) Repeatedly subjecting Aggrieved Parties to Dr. Malek's opinions regarding
24 their spouses or significant others, including but not limited to:
- 25 i. Dr. Malek telling Ms. Sawyer that she should not worry about her
26 husband being deployed to Afghanistan and should instead go out
 for drinks with Dr. Malek after her husband is deployed;

- ii. Telling Ms. Jenkins that her husband is a loser; and
- iii. Telling Ms. Jenkins that she should leave her husband and have a relationship with Dr. Malek.

19. The offensive sexual and sex-based conduct was sufficiently severe or pervasive as to alter the terms and conditions of employment for Aggrieved Parties subjected to Dr. Malek's conduct.

20. Aggrieved Parties cried before, during and after work, suffered from hair loss due to stress, and had anxiety about their appearance due to Defendants' offensive sexual and sex-based conduct.

21. The harassment in Defendants' workplace created a hostile work environment based on sex.

22. Dr. Malek was told by Aggrieved Parties that his conduct was inappropriate, unwanted and abusive.

23. On or around June 20, 2010, Ms. Sawyer complained to Dr. Malek about his sexual harassing conduct and comments directed at Aggrieved Parties and similarly situated female employees.

24. Upon information and belief, subsequent to Ms. Sawyer's discussion with Dr. Malek in which she repeatedly stated her opposition to his offensive conduct and comments, Ms. Sawyer's hourly wages were reduced from \$20 per hour to \$15 per hour.

25. Due to the reduction in hourly wages, along with Dr. Malek's unwillingness to remedy the sexual harassment and hostile work environment in Smile Spa, Ms. Sawyer felt compelled to resign and was constructively discharged from her employment with Defendants.

26. On July 27, 2010, Ms. Sawyer filed a sexual harassment, sexually hostile and intimidating work environment and retaliation charge against Smile Spa with the Division.

27. On or around August 2010, Ms. Jenkins, Ms. Grinde and Ms. Bailey were informed by Dr. Malek that Ms. Sawyer filed a sexual harassment charge against him with the Division.

1 28. On or around August 2010, Dr. Malek told Ms. Jenkins, Ms. Grinde and Ms.
2 Bailey repeatedly to "back him up" or maybe Ms. Jenkins, Ms. Grinde and Ms. Bailey did not
3 need to work at Smile Spa. Ms. Jenkins, Ms. Grinde and Ms. Bailey understood Dr. Malek's
4 comment as a veiled threat of termination.

5 29. On or around April 14, 2011, Dr. Malek reiterated to Ms. Grinde and Ms. Bailey
6 that if they were called by the Division and failed to provide favorable testimony for
7 Defendants, "maybe they did not need to work here," referring to Smile Spa.

8 30. On or around April 21, 2011, Dr. Malek told Ms. Jenkins that should the Division
9 contact Ms. Jenkins, Ms. Jenkins "better not" disclose Dr. Malek's conduct and better provide
10 the Division with favorable testimony.

11 31. On or around April 21, 2011, Ms. Jenkins felt compelled to resign and was
12 constructively discharged from her employment with Defendants.

13 32. On or around April 21, 2011, Ms. Grinde felt compelled to resign and was
14 constructively discharged from her employment with Defendants.

15 33. On or around April 24, 2011, Ms. Bailey felt compelled to resign and was
16 constructively discharged from her employment with Defendants.

17 34. All Aggrieved Parties filed a timely charge of sex based discrimination with the
18 Division.

19 35. In the charge of discrimination, Aggrieved Parties alleged that they were
20 subjected to sex discrimination, sexual harassment, sex-based hostile work environment and
21 retaliation. Aggrieved Parties cited specific incidents that had occurred within 180 days of the
22 date of their charges.

23 36. The Division found that reasonable cause existed to believe Defendants
24 discriminated against Aggrieved Parties because of their sex in violation of A.R.S. § 41-1463
25 and retaliated against Aggrieved Parties in violation of A.R.S. § 41-1464.
26

1 37. A timely attempt to conciliate this matter in accordance with A.R.S. § 14-
2 1481(D) was unsuccessful. Consequently, the State brings this Complaint pursuant to A.R.S. §
3 14-1481(D).

4 **COUNT ONE**

5 **Different Terms and Conditions of Employment,**

6 **Sex-Based Hostile Work Environment and Sexual Harassment**

7 38. The State re-alleges and incorporates by reference the foregoing allegations
8 contained in this Complaint.

9 39. Arizona Revised Statute § 14-1463 prohibits an employer from discriminating
10 against any individual with respect to compensation, terms, conditions or privileges of
11 employment because of sex.

12 40. Arizona Revised Statute §41-1461(6)(a) defines employer for purposes of sexual
13 harassment as a person who has one or more employees in the current or proceeding calendar
14 year.

15 41. Since at least 2010, Defendants have engaged in unlawful employment practices,
16 in violation of ACRA, A.R.S. § 41-1463, by subjecting Aggrieved Parties to different terms and
17 conditions of employment, including but not limited to, sex-based hostile work environment
18 and sexual harassment.

19 42. The offensive sexual and sex-based conduct was sufficiently severe or pervasive
20 as to alter the terms and conditions of employment for Aggrieved Parties subjected to Dr.
21 Malek's conduct.

22 43. Aggrieved Parties cried before, during and after work, and had anxiety about their
23 appearance due to Defendants' offensive sexual and sex-based conduct.

24 44. Ms. Sawyer suffered from hair loss due to the stress of working with Defendants.

25 45. Dr. Malek was told by Aggrieved Parties that his conduct was inappropriate,
26 unwanted and abusive.

46. The effect of the events and conduct described in the foregoing allegations has been to make Aggrieved Parties believe that they had to tolerate sexual harassment and sex-based harassment and that nothing would be done to the alleged harasser if they complained.

47. The effect of the events and conduct described in the foregoing allegations has denied Aggrieved Parties equal employment opportunities.

48. As a result of Defendants' discrimination and Aggrieved Parties' constructive discharge, Aggrieved Parties suffered monetary damages for which they should be compensated in an amount to be determined at trial pursuant to A.R.S. § 41-1481(G).

49. The State is also entitled to injunctive relief against Defendants' actions pursuant to A.R.S. § 41-1481(G).

COUNT TWO

Retaliation in Violation of A.R.S. § 41-1464

50. The State re-alleges and incorporates by reference the foregoing allegations contained in this Complaint.

51. Arizona Revised Statute § 41-1464(A) states that it is an unlawful employment practice for an employer to discriminate against any of its employees because the employee opposed any practice which is an unlawful employment practice or has testified, assisted or participated in any manner in a Division investigation.

52. Ms. Sawyer complained to Dr. Malek and opposed conduct which she reasonably believed to be an unlawful employment practice under the Arizona Civil Rights Act.

53. Ms. Sawyer's hourly wage was reduced from \$20 per hour to \$15 per hour.

54. Ms. Sawyer felt compelled to resign and was constructively discharged from her employment with Defendants.

55. Ms. Jenkins, Ms. Grinde and Ms. Bailey opposed conduct which they reasonably believed to be an unlawful employment practice under the Arizona Civil Rights Act.

56. Ms. Jenkins, Ms. Grinde and Ms. Bailey felt compelled to resign from their employment with Defendants in order to testify truthfully in a Division investigation.

57. Defendants have engaged in unlawful employment practices, in violation of ACRA, A.R.S. § 41-1464, by retaliating against Aggrieved Parties because they opposed Dr. Malek's sexual harassment.

58. As a result of Defendants' unlawful retaliation and Aggrieved Parties' constructive discharge, Aggrieved Parties suffered monetary damages for which they should be compensated in an amount to be determined at trial pursuant to A.R.S. § 41-1481(G).

59. The State is entitled to injunctive relief against Defendants' actions pursuant to A.R.S. § 41-1481(G).

PRAYER FOR RELIEF

WHEREFORE, the State requests that this Court:

A. Enter judgment on behalf of the State, finding that Defendants unlawfully discriminated against and retaliated against Aggrieved Parties in violation of the Arizona Civil Rights Act.

B. Permanently enjoin Defendants, their successors, assigns and all persons in active concert or participation with Defendant from engaging in any unlawful employment practice, including different terms and conditions of employment, sex-based hostile work environment, sexual harassment, and retaliation that violated the Arizona Civil Rights Act.

C. Order Defendants to make whole Aggrieved Parties by providing appropriate back pay in amounts to be determined at trial.

D. Order Defendants to make whole Aggrieved Parties by providing them appropriate front pay in amounts to be determined at trial.

E. Order Defendants to institute, implement and enforce policies, practices and programs that provide equal employment opportunities for women, and that eradicate the effects of its present unlawful employment practices, including retaliation.

F. Order Defendant Dr. Malek to complete training, consulting and coaching by a qualified occupational psychologist or other trained professional for remedial sexual harassment counseling.

1 G. Order Defendants to provide training to its officers, supervisors, managers and
2 other employees regarding discriminatory harassment and retaliation in the workplace.

3 H. Issue an Order authorizing the State to monitor Defendants' compliance with the
4 Arizona Civil Rights Act.

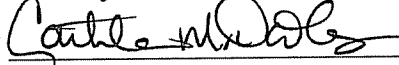
5 I. Award the State its taxable costs incurred in bringing this action.

6 J. Grant such other and further relief as this Court may deem just and proper in the
7 public interest.

8
9 DATED this 31st day of October, 2011.

10 THOMAS C. HORNE

11 Attorney General

12 By 

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